

**Assembly Bill No. 2343**

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Passed the Assembly August 31, 2006

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*Chief Clerk of the Assembly*

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Passed the Senate August 30, 2006

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2006, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 61384, 62095.1, 62521, 62560, 62561, 62563, 62564, 62574, and 62707 of, and to add Section 62580.5 to, the Food and Agricultural Code, relating to milk, and making a appropriation therefor.

## LEGISLATIVE COUNSEL'S DIGEST

AB 2343, Committee on Agriculture. Milk producers' security trust fund.

Existing law confers upon the Secretary of Food and Agriculture the ability to establish and administer the Milk Producers Security Trust Fund to protect producers against loss of payment for bulk milk. Existing law provides that security charges may be collected by the secretary until he or she determines that the value of the fund approximates 110% of the dollar amount of the total purchases of milk being paid for and received in one month by the handler with the largest payment obligation to producers for that month.

This bill would instead provide that security charges shall only be collected until January 1, 2007, and that the fund cash shall be maintained at \$30,000,000. If the fund cash falls below \$30,000,000, the secretary may resume collecting security charges in order that the fund cash is maintained at that level. This bill would also provide that if in any month 110% of a handler's average monthly milk purchases exceed the higher of either the fund cash or \$30,000,000 the secretary shall require that handler to provide acceptable securities, as defined, within 10 business days of notice. This bill would provide that when acceptable securities in the required amount, as specified, are provided, the secretary shall not collect security charges from that handler. This bill would provide that shipments to handlers who fail to provide acceptable securities will be charged enhanced security charges, and may have their license suspended, revoked, or conditioned. The bill would make related changes. The bill would provide that the additional acceptable securities and any enhanced security charges would be deposited

into the Milk Producers Security Trust Fund, a continuously appropriated fund.

By authorizing additional funds to be paid into a continuously appropriated fund, this bill would make an appropriation.

Existing law specifies the amount of security charges in mills per pound of product each handler is obligated to pay into the Milk Producers Security Trust Fund.

This bill would decrease the mills per pound paid by handlers, as specified.

Existing law provides that any handler subject to any milk pooling plan, as specified, that receives milk that is not subject to the calculation of producer prices, as specified, shall be obligated to pay the security charges for any portion of that milk that is assigned to class 1, class 2, and class 3 usage.

This bill would change these provisions to also include milk that is assigned to class 4a and class 4b usage.

Existing law provides that any handler receiving milk that is not subject to any pooling plan, as specified, shall be obligated to remit security charges for class 1, class 2, and class 3 products, and may deduct the security charges from the minimum prices to be paid to producers.

This bill would change these provisions to also include class 4a and 4b products.

Existing law makes it unlawful for any retailer, and other specified entities to sell milk, cream or any dairy products at less than cost. Existing law further provides that it is unlawful for a handler to directly or indirectly pay less than the minimum producer price established under the applicable stabilization and marketing plan.

This bill would provide that these prohibitions do not apply to sales of bulk milk between handlers.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 61384 of the Food and Agricultural Code is amended to read:

61384. (a) The sale by any retailer, wholesale customer, manufacturer, or distributor, including any producer-distributor or nonprofit cooperative association acting as a distributor, of

milk, cream, or any dairy product at less than cost is an unlawful practice. This subdivision applies to finished products, and does not apply to sales of bulk milk between handlers.

(b) For the purposes of this section, the following terms have the following meanings:

(1) “Cost,” as applied to manufacturers and distributors, means the total consideration paid or exchanged for raw product, plus the total expense incurred for manufacturing, processing, handling, sale, and delivery.

(2) “Cost,” as applied to wholesale customers, means the invoice price charged to the wholesale customer, or the expense of replacement, whichever is lower, plus the wholesale customer’s cost of doing business.

(3) “Cost of doing business,” as applied to wholesale customers, means a wholesale customer’s total operating expense divided by the customer’s total sales income.

(4) (A) Except as provided in subparagraph (B), “total consideration paid or exchanged for raw product,” in the case of market milk or market cream, means the applicable minimum price of the market milk or market cream, if any, payable by distributors to producers pursuant to stabilization or marketing plans in effect pursuant to Chapter 2 (commencing with Section 61801).

(B) Notwithstanding subparagraph (A), in situations involving sales on a bid basis to public agencies or institutions, the definition in subparagraph (A) shall only apply to market milk or market cream that is utilized for class 1 purposes, as those purposes are defined in Chapter 2 (commencing with Section 61801).

(c) Proof of cost, based on audits or surveys conducted in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, and modified, if necessary, to satisfy the requirements of this section, shall establish a rebuttable presumption of that cost at the time of the transaction of any sale. This presumption is a presumption affecting the burden of proof, but it does not apply in a criminal action.

(d) Nothing in this section shall be deemed to prohibit any of the following activities:

(1) The meeting, in good faith, of a lawful competitive price or a lawful competitive condition.

(2) A distributor's action in making conditional sales of equipment or other property, extending credit for merchandise purchased, or paying a customer's obligations not otherwise prohibited by this chapter to another distributor in connection with the transfer of the customer's business from the latter to the former.

(e) The secretary shall establish, by regulation pursuant to Section 61341, the procedures which shall be used to make the determinations required by this section, including the following:

(1) Any modifications to the generally accepted accounting principles described in subdivision (c) necessary to satisfy the requirements of this section.

(2) Procedures for evaluating efforts to meet lawful competitive prices or conditions.

(3) Other procedures necessary or appropriate to facilitate the application or enforcement of this section.

SEC. 2. Section 62095.1 of the Food and Agricultural Code is amended to read:

62095.1. The payment by a handler, either directly or indirectly, of less than the minimum producer price established under the applicable stabilization and marketing plan adopted pursuant to this chapter, is an unlawful trade practice. This section does not apply to sales of bulk milk between handlers.

SEC. 3. Section 62521 of the Food and Agricultural Code is amended to read:

62521. For purposes of this chapter, the following terms mean:

(a) "Acceptable security" means a surety bond from an admitted surety insurer, deposits of government securities, a letter of credit, or other form of performance guarantee acceptable to the secretary and meeting the requirements as acceptable security pursuant to law. Letters of credit and any other instrument used as acceptable security shall contain provisions the secretary may prescribe, shall have an effective life of no less than five years, shall be verified to the secretary as effective by September 1 of each year preceding each calendar year for which the instrument serves as security, shall name the secretary as the beneficiary of the instrument, shall be clean and

irrevocable, and shall provide that the secretary may draw upon it up to the total amount in the event of a handler payment default. Any interest accrued by the instrument shall be the property, and for the benefit, of the handler posting the instrument. Acceptable securities provided to the secretary shall not be released by the secretary unless the handler's average monthly purchases, as determined annually by the secretary, fall below thirty million dollars (\$30,000,000).

(b) "Board" means the Milk Producers Security Trust Fund Board.

(c) "Covered milk" means milk that would, in the event of a default in payment by the purchasing handler, qualify for coverage under Article 5 (commencing with Section 62580) of Chapter 2.5 of Part 3.

(d) "Fund" means the Milk Producers Security Trust Fund created pursuant to Section 62506.

(e) "Fund cash" means the combined value of the security charges collected pursuant to Section 62561 and any increments received pursuant to Section 62573.

(f) (1) Except as provided in paragraph (2), "fund surplus" means the portion of fund cash at any particular time that consists of increments received by the fund pursuant to Section 62573.

(2) If payment of producer claims pursuant to Article 7 (commencing with Section 62620) reduces the fund cash to thirty million dollars (\$30,000,000), "fund surplus" shall thereafter mean the amount by which the fund cash exceeds thirty million dollars (\$30,000,000).

(g) "Handler" means any person who as owner, agent, broker, or intermediary, either directly or indirectly, receives, purchases, or otherwise acquires ownership, possession, or control of milk in unprocessed or bulk form from a producer or a producer-handler for the purpose of manufacturing, processing, selling, or other handling. It includes cooperative associations that, either directly or indirectly, receive, purchase, or otherwise acquire ownership, possession, or control of milk from other handlers or producers who are nonmembers of the cooperative.

(h) "Milk" means bulk whole milk, bulk reduced-fat milk, bulk lowfat milk, bulk skim milk, bulk condensed skim, and bulk cream, and any other combination of these products which have not had nondairy ingredients added. It does not include milk

which has been packaged in bottles, cartons, dispenser cans, or other consumer packages.

(i) “Producer” means any person that produces milk from five or more cows whose bulk milk is received, acquired, or handled by a handler. It includes the nonprofit cooperative associations described in Article 3 (commencing with Section 61871) of Chapter 2 in the sale of milk of its member producers to other handlers.

SEC. 4. Section 62560 of the Food and Agricultural Code is amended to read:

62560. (a) The security charges provided for in Section 62561 shall be collected until January 1, 2007. Unless otherwise permitted by this section, the secretary shall thereafter discontinue collection of the security charges. The fund shall consist of the security charges collected, the value of any alternative financial instrument, and acceptable securities provided by handlers pursuant to subdivision (c).

(b) If, after January 1, 2007, payment of producer claims reduces the fund cash below thirty million dollars (\$30,000,000), the secretary may resume collecting security charges in order that the fund cash is thereafter maintained at thirty million dollars (\$30,000,000). Security charges necessary to return the fund cash to thirty million dollars (\$30,000,000) shall, subject to subdivision (c), be collected from all handlers making purchases of milk, including handlers who have posted acceptable securities pursuant to subdivision (c).

(c) If, in any month, 110 percent of any handler’s average monthly milk purchases, computed over the preceding 12 months, unless the increase in value of milk purchases is the result of substantial business expansion or the result of a merger or acquisition, in which case the 12-month computation requirement does not apply, exceeds the fund cash as of the end of that month, or thirty million dollars (\$30,000,000) whichever is higher, the secretary shall require that handler to provide acceptable securities within 10 working days in an amount equal to the difference between the fund cash or thirty million dollars (\$30,000,000) whichever is higher, and 110 percent of that handler’s average monthly milk purchases. When handlers have provided acceptable securities covering the difference, the secretary shall not collect security charges from those handlers

for the portion of their average monthly milk purchases covered by acceptable securities. Shipments to handlers failing to provide acceptable securities within 10 working days of notice by the secretary of the obligation to post acceptable securities, as required by this subdivision, shall be listed by the secretary as ineligible for coverage under the fund pursuant to Section 62586.

(d) The secretary shall calculate the value of milk handlers' average monthly milk purchases at least once each year for those handlers whose previous average monthly milk purchases exceed twenty million dollars (\$20,000,000). If, as a result of any such calculation, the secretary determines that a handler must provide additional acceptable securities to satisfy the requirements of subdivision (c), that handler shall provide additional acceptable securities within 10 working days of notice by the secretary.

(e) In the event a handler fails to comply with subdivision (d):

(1) In addition to paying all other amounts required by this chapter, including any security charges then in effect under subdivision (a) of Section 62561, that handler shall pay an enhanced security charge on all purchased milk to be computed as follows:

(A) (i) One and seven-tenths mills per pound (\$0.0017) for class 1 fat.

(ii) Nine-tenths mills per pound (\$0.0009) for class 1 solids-not-fat.

(iii) One-tenth mill per pound (\$0.0001) for class 1 fluid.

(B) (i) Three and two-tenths mills per pound (\$0.0032) for classes 2, 3, 4a, and 4b fat.

(ii) One and three-tenths mills per pound (\$0.0013) for classes 2, 3, 4a, and 4b solids-not-fat.

(2) A handler shall be liable for the enhanced security charges required by this section until the handler provides the required additional acceptable securities to the secretary. Notwithstanding Section 62521 and subdivision (b) of this section, enhanced security charges paid pursuant to this paragraph shall be deposited into the trust fund and become part of the fund cash.

(f) If a handler fails to timely provide acceptable securities, or additional acceptable securities, as required by this section, the secretary shall promptly give notice of that fact to all producers who have a contract on file with the secretary, all cooperative associations, and other interested parties. A handler failing to



post acceptable securities may also be subject to revocation, suspension, or nonrenewal or placement of conditions upon the milk handler's license pursuant to Sections 62146, 62149, and 62151.

(g) In consultation with the Milk Producers Security Trust Fund Advisory Board, the secretary may consider and use alternative financial instruments, in addition to, or in lieu of, using security charges to meet the financial security requirements of this section.

SEC. 5. Section 62561 of the Food and Agricultural Code is amended to read:

62561. (a) The following security charges shall be in effect for any period for which the secretary has implemented collections under this chapter:

(1) (A) One and seven-tenths mills per pound (\$0.0017) for class 1 fat.

(B) Nine-tenths mills per pound (\$0.0009) for class 1 solids-not-fat.

(C) One-tenth mill per pound (\$0.0001) for class 1 fluid.

(2) (A) Three and two-tenths mills per pound (\$0.0032) for classes 2, 3, 4a, and 4b fat.

(B) One and three-tenths mills per pound (\$0.0013) for classes 2, 3, 4a, and 4b solids-not-fat.

(b) The secretary shall add the security charges to the prices established for all classes of milk in accordance with Chapter 2 (commencing with Section 61801). The secretary is only authorized by this article to collect security charges on covered milk.

SEC. 6. Section 62563 of the Food and Agricultural Code is amended to read:

62563. Any handler subject to any pooling plan in effect under Chapter 3 (commencing with Section 62700) shall continue to be obligated for the minimum prices provided for in the stabilization and marketing plans on the pooled usage of the handler. However, any part of the minimum prices that is attributable to the security charges established pursuant to Section 62561 shall be deducted before producer prices are determined under the pooling plan.

Any handler subject to the pooling plan that receives milk that is not included in the calculation of producer prices determined

under the pooling plan shall be obligated to pay the security charges established pursuant to Section 62561 for any portion of that milk that is assigned to class 1, class 2, class 3, class 4a, and class 4b usage.

The amount of any handler's obligation attributable to the security charges established pursuant to Section 62561 shall be remitted by the secretary to the fund by the end of the month following the month the pool calculations were completed.

SEC. 7. Section 62564 of the Food and Agricultural Code is amended to read:

62564. Any handler receiving milk not subject to any pooling plan in effect pursuant to Chapter 3 (commencing with Section 62700) shall be obligated to remit to the secretary any security charges in effect pursuant to Section 62561 for class 1, class 2, class 3, class 4a, and class 4b products produced from the milk and may deduct the security charges from the minimum prices required to be paid to producers.

SEC. 8. Section 62574 of the Food and Agricultural Code is amended to read:

62574. Immediately following the payment to the fund of the increment provided in Section 62573, if the secretary determines that there is a fund surplus, the secretary may, after consultation with the Trust Fund Board, transfer an amount equal to the increment referenced in the section to an account administered by the Dairy Marketing Branch of the department to be used to reduce the producer and handler assessments that would otherwise be imposed pursuant to Article 14 (commencing with Section 62211) of Chapter 2. One-half of the increment so transferred shall be used to reduce the obligation of producers and one-half shall be used to reduce the obligation of handlers pursuant to that article.

SEC. 9. Section 62580.5 is added to the Food and Agricultural Code, to read:

62580.5. Any producer entity, including a nonprofit cooperative that severs a disqualifying beneficial-ownership interest in a handler to which it supplies bulk milk, shall not have trust fund coverage for future milk shipments to that handler for a period of 12 months after notice is given to the secretary of termination of the beneficial ownership interest unless a waiver is granted subject to Section 62587.

SEC. 10. Section 62707 of the Food and Agricultural Code is amended to read:

62707. The formulation committee shall make recommendations to the secretary for inclusion in the pooling plan, and the secretary shall include in the pooling plan, all of the following:

(a) The establishment of one or more pools throughout the state.

(b) (1) The base period to be used in determining the production and class 1 usage bases of each producer directly affected by the pooling plan. The base period shall, at the producer's option, be his or her fluid milk production and usage in the pool area during the calendar year 1967 on an average daily basis or his or her production and usage in the pool area during the last six months of 1966 on an average daily basis.

(2) As to a producer south and east of San Geronio Pass, his or her production base may, at his or her option, be four times his or her production in the months of December 1966, and January and February 1967.

(3) If a producer, during any base period, had a valid contract with a distributor, or as a member of a cooperative association had an allocation, that provided that the distributor or cooperative association was required to accept a larger amount of fluid milk from the producer than the producer actually produced during the period, on proof satisfactory to the secretary of the contract or allocation, the producer may, at his or her option, have the amount specified in the contract or allocation established as his or her production base.

(c) The establishment of a class 1 usage for each producer, which shall be the amount of his or her production of fluid milk accounted for as class 1, and any fluid milk sold for use as class 1 to a United States military installation but that was not accounted for as class 1.

(d) The allocation to each producer within any pool of a pool quota, which, initially, shall be 110 percent of that producer's class 1 usage, as determined in subdivision (c).

(e) (1) The determination of new class 1 usage and the allocation of pool quota based thereon in a manner consistent with effectuating the purposes of this chapter.

(2) All producers who have not reached the equalization point shall share in the allocation of pool quota on the basis of a formula that gives substantial weight to each producer's production base, but that, at the same time, allocates a larger percentage to hardship cases and low class 1 usage producers.

(3) The allocations shall be made on the basis of each individual producer, with each cooperative association considered as a single producer. The cooperative associations of producers shall reassign any new quota to their own members subject to Section 62710.

(4) Annually, within no more than four months after August 31 of each year, the pool quota shall be adjusted by each component to reflect any additional pool quota. Any increase in pool quota shall be determined from the amount of new class 1 and class 2 solids not fat usage that developed during the preceding annual period which exceeded the previous highest identical annual period since the 1988–89 fiscal year.

There shall be no downward adjustment of pool quota below the quota initially established pursuant to this chapter.

(f) The establishment of production bases and pool quotas for new fluid milk producers who wish to enter the pooling plan after the effective date of the plan. The recommendations of the committee shall be reasonably equitable to both the new producers and to participating producers and consistent with effectuating the purposes of this chapter.

(g) The transfer of production bases and pool quotas from one fluid milk producer to another under conditions so designed as to prevent abuses in the transfers and to avoid the development of excessive values for the bases and quotas.

(h) Notwithstanding Section 62711, any provision which may be necessary to encourage the availability of market milk for those usages for that class 1 and class 2 milk is mandatory.

(i) Any governmental agency that produces, processes, and consumes in its own facilities only its own production shall not be a pool plant. The plant shall operate outside the pool for accounting and settlement purposes unless the plant notifies the secretary of its election to participate in the pool. Any production of such a governmental agency that is transferred or diverted to a pool plant shall be classified for the purpose of settlement at the class 4a or class 4b price, whichever is lower.

(j) Any and all other matters necessary and desirable to effectuate the provisions of this chapter.

The recommendations of the formulation committee and the pooling plan may provide exceptions from the plan's general application for individual cases of hardship.





Approved \_\_\_\_\_, 2006

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*Governor*